

STATE OF MINNESOTA

IN SUPREME COURT

C1-84-2137

Order for Hearing to Adopt Amendments
to Minnesota Rules of Criminal Procedure

IT IS HEREBY ORDERED that a hearing be had before this Court in the courtroom of the Minnesota Supreme Court, State Capitol, on Thursday, June 25, 1987, at 11:00 o'clock a.m., to consider the adoption of the amendments to the Minnesota Rules of Criminal Procedure.

IT IS FURTHER ORDERED that:

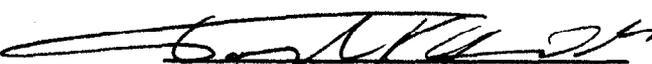
1. All persons, including members of the Bench and Bar, desiring to present written statements concerning the subject matter of this hearing, but who do not wish to make an oral presentation at the hearing, shall file 10 copies of such statement with the Clerk of the Appellate Courts, 230 Capitol, St. Paul, Minnesota 55155, on or before June 12, 1987, and
2. All persons desiring to make an oral presentation at the hearing shall file 10 copies of the material to be so presented with the aforesaid Clerk together with 10 copies of a request to make the oral presentation. Such statements and requests shall be filed on or before June 12, 1987, and
3. All persons wishing to obtain copies of the proposed rules shall write to the aforesaid Clerk.

Dated: April 8, 1987

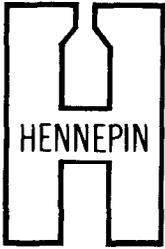
BY THE COURT:

OFFICE OF
APPELLATE COURTS
FILED

APR 08 1987


Chief Justice

WAYNE TSCHIMPERLE
CLERK



OFFICE OF THE PUBLIC DEFENDER
C2200 Government Center
Minneapolis, Minnesota 55487-0520
(612) 348-7530

William R. Kennedy, Chief Public Defender

6/29/87

June 16, 1987

Clerk of Appellate Courts
230 Capitol
St. Paul, MN 55155

Dear Clerk of Appellate Courts:

Please add my name to the list of people who will testify before the Court of June 25, 1987 on the proposed changes to the Rules of Criminal Procedure. Specifically I will be opposing the proposed changes in Rules 26.03 subd 11 and the joint trial proposal. Thank you.

Sincerely,

Philip D. Bush
Assistant Public Defender

OFFICE OF
APPELLATE COURTS
FILED

JUN 29 1987

WAYNE TSCHAMPERLE
CLERK

HENNEPIN COUNTY

an equal opportunity employer

6-16-87

NEIGHBORHOOD JUSTICE CENTER, INC.

Main Office
500 Laurel Avenue
Saint Paul, Minnesota 55102
(612) 222-4703

West Side Office
464 South Robert Street
Saint Paul, Minnesota 55107
(612) 227-8497



Stephen W. Cooper, Esquire
Executive Director

Reply to: Main Office

June 16, 1987

**OFFICE OF
APPELLATE COURTS
FILED**

JUN 16 1987

**WAYNE TSCHIMPERLE
CLERK**

61-84-2137

Clerk of Appellate Courts
230 State Capitol Building
St. Paul, MN 55155

Dear Sir:

I would like my name included on the list of people speaking at the hearing about the proposed changes to the Rules of Criminal Procedure which is scheduled for June 25, 1987.

If there are any problems or questions, please contact me at the above phone number or address. Thank you for your assistance.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'Stephen W. Cooper'.

Stephen W. Cooper
Executive Director

SWC/cw

636

THOMPSON & LUNDQUIST, LTD.
ATTORNEYS AT LAW

PETER THOMPSON
JOHN W. LUNDQUIST
ROBERT J. SORENSEN

June 17, 1987

(612) 871-0708
2520 PARK AVENUE SOUTH
MINNEAPOLIS, MINNESOTA 55404

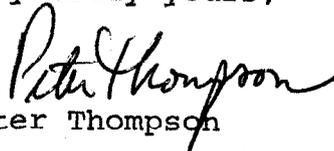
Clerk of Appellate Courts
230 State Capitol
St. Paul, Minnesota 55155

Dear Sir:

C4-84-2137

I would request an opportunity to be heard as to the hearing on the Rules of Criminal Procedure concerning the order of final argument. I was only advised of this hearing, which I understand is June 25, 1987, today.

Very truly yours,


Peter Thompson

PT:cb

cc: Philip Bush, Esq.

OFFICE OF
APPELLATE COURTS
FILED
JUN 19 1987
WAYNE TSCHIMPERLE
CLERK

BRUCE H. HANLEY, P. A.
ATTORNEY AT LAW
SUITE 1400
701 FOURTH AVENUE SOUTH
MINNEAPOLIS, MINNESOTA 55415

RECEIVED
JUN 19 1987

BRUCE H. HANLEY
JAY P. YUNEK

TELEPHONE
(612) 338-6990

June 18, 1987

*ALSO ADMITTED IN WISCONSIN

Ms. Sue Dosal
Court Administrator
Minnesota Supreme Court
230 State Capitol Building
Saint Paul, Minnesota 55155

01-84-2137

OFFICE OF
APPELLATE COURTS
FILED

JUN 19 1987

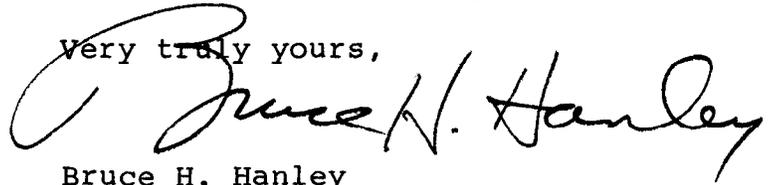
WAYNE TSCHIMPERLE
CLERK

Dear Ms. Dosal:

I respectfully request the opportunity to address the Court on June 25, 1987, at 11:00 A.M., at the Public Hearing relative to the proposed Amendment to Rule 26.03, Subdivision 11 of the Rules of Criminal Procedure.

Thank you very much for your attention to this request.

Very truly yours,



Bruce H. Hanley

BHH/ijo

NICHOLS KASTER & ANDERSON
ATTORNEYS AT LAW

Donald H. Nichols
James H. Kaster
Jeffrey P. Anderson
Bradley C. Warner

4644 IDS Center
80 South Eighth Street
Minneapolis, Minnesota
55402-2207

TELEPHONE
(612) 338-1919

June 16, 1987

Clerk of Appellate Courts
230 Capitol Building
St. Paul, MN 55155

OFFICE OF
APPELLATE COURTS
FILED

JUN 18 1987

Re: Hearing on Joinder - Closing Argument

CI-84-2137

WAYNE TSCHIMPERLE
CLERK

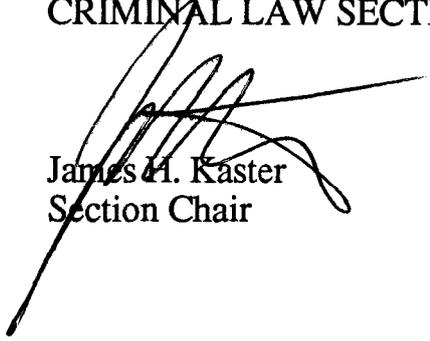
Dear Sir/Madame:

I have just reviewed my Finance and Commerce from June 11, 1987, and request the opportunity to be heard on the order of final argument and joinder scheduled for hearing before the Minnesota Supreme Court on June 25th at 11:00 a.m.

Thank you for your attention to this matter.

Sincerely,

CRIMINAL LAW SECTION


James H. Kaster
Section Chair

JHK/mec

LAW OFFICES

MESHBESHER, SINGER & SPENCE, LTD.

1616 PARK AVENUE

MINNEAPOLIS, MINNESOTA 55404

(612) 339-9121

2020 AMHOIST TOWER

ST. PAUL, MINNESOTA 55102

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WILLIAM R. SKOLNICK
DANIEL J. BOIVIN**
MICHAEL C. SNYDER
JAMES A. WELLNER
JOHN P. SHEEHY
ANDREW S. BIRRELL
MEAGHAN E. HARPER
JOHN C. DUNLAP
MARK D. STREED
ROBERT M. SPECTOR
TIMOTHY J. LEER

KENNETH MESHBESHER
RONALD I. MESHBESHER
GERALD M. SINGER
RUSSELL M. SPENCE*
JAMES H. GILBERT*
JOHN P. CLIFFORD
DENNIS R. JOHNSON
RICHARD L. CESARIO
TRACY EICHHORN-HICKS*
JACK NORDBY
PAUL W. BERGSTROM
PATRICK K. HORAN
STEVEN J. MESHBESHER

*ALSO ADMITTED TO
PRACTICE IN WISCONSIN

**ALSO ADMITTED TO
PRACTICE IN ILLINOIS

OFFICE OF
APPELLATE COURTS
FILED

JUN 18 1987

WAYNE TSCHIMPERLE
CLERK

REPLY TO: MINNEAPOLIS OFFICE

June 17, 1987

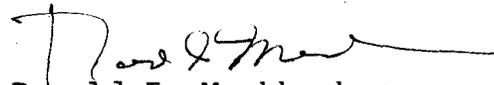
Clerk of Appellate Courts
230 State Capitol Building
St. Paul, MN 55155

Re: Supreme Court Hearing - Amendments to Rules of Criminal
Procedure. C1-84-2137

Dear Mr. Tschimperle:

Please place my name on the agenda to speak to the proposal to
amend the Rules of Criminal Procedure to conform to the recent
legislative enactments attempting to change the final argument
and joint trial rules. Thank you.

Yours truly,



Ronald I. Meshbesh

RIM:lr



STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

ST. PAUL 55155

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

ADDRESS REPLY TO:
200 FORD BLDG.
117 UNIVERSITY AVE.
ST. PAUL, MN 55155
TELEPHONE: (612) 296-7575

June 12, 1987

OFFICE OF
APPELLATE COURTS
FILED

JUN 12 1987

WAYNE TSCHIMPERLE
CLERK

- Mr. Wayne O. Tschimperle
Clerk of Appellate Courts
230 State Capitol
St. Paul, Minnesota 55155

Re: In Re Proposed Amendments to the Rules of
Criminal Procedure
Supreme Court File No. C1-84-2137

Dear Mr. Tschimperle:

Enclosed herewith for filing with the Court are nine
copies of the Statement By The Attorney General Of The State
Of Minnesota And Request For Oral Argument in the above-entitled
matter.

Very truly yours,

Paul R. Kempainen

PAUL R. KEMPAINEN
Special Assistant
Attorney General

Criminal Division
Telephone: (612) 296-7573

PRK:njr
Enclosures

AN EQUAL OPPORTUNITY EMPLOYER

Cl-84-2137

STATE OF MINNESOTA

IN SUPREME COURT

In Re Proposed
Amendments To The
Rules of Criminal
Procedure

STATEMENT BY THE
ATTORNEY GENERAL OF
THE STATE OF MINNESOTA
AND REQUEST FOR ORAL ARGUMENT

The Office of the Attorney General has reviewed the various proposed amendments to the Rules of Criminal Procedure which are set for hearing before this Court on June 25, 1987. With respect to the majority of the proposals that are of a "housekeeping" nature, premised on the changes required by court integration, the Attorney General has no comment and generally supports their adoption.

Likewise, with respect to the two supplemental proposals for amendments (Published in Finance and Commerce May 30, 1987) having to do with:

- (1) Amending Rule 26.03, subd. 11, to allow prosecution rebuttal in closing arguments, and
- (2) Amending the Rules to remove the presumption against joint trials,

the Attorney General supports their adoption. These changes are premised upon recent legislative enactments that were supported by the Attorney General, and upon which extensive comment has already been made during the last legislative session.

There is, however, one proposed change that is both substantive in nature and detrimental to the interests of criminal justice, yet has been the subject of little in the way of public discussion regarding its effect. This is the proposal to amend Rule 18.04 to allow a grand jury witness who has been granted use immunity to have an attorney present in the grand jury room while testifying. The Attorney General opposes such an amendment and, for that reason, respectfully requests leave to participate in oral argument at the public hearing to be held June 25, 1987.

ARGUMENT

The proposal to amend Rule 18.04 would be a substantive change in grand jury procedure for which the Advisory Committee cites neither a need nor authority. It is noteworthy that under federal law, a witness is not entitled to have counsel present with him in the grand jury under any circumstances. Fed. R. Crim. P. 6(d); United States v. Mandujano, 425 U.S. 564 (1976). Therefore, there is no federal constitutional basis for the proposed change.

It is true that current Minnesota rules go further than federal law in allowing a person who has waived his immunity from self-incrimination to have counsel present. The reason for this, however, is that such witnesses have a legal choice to make during their testimony as to whether they will (re)invoke their privilege some time during the proceedings. It is only such a witness who needs the helping hand of counsel. As the United States Supreme Court as stated:

The assertion of a testimonial privilege, as of many other rights, often depends upon legal advice from someone who is trained and skilled in the subject matter, and who may offer a more objective opinion. A layman may not be aware of the precise scope, nuances, and boundaries of his Fifth Amendment privilege. It is not a self-executing mechanism; it can be affirmatively waived, or lost by not asserting it in a timely fashion.

Maness v. Meyers, 419 U.S. 449, 466 (1975). See also State v. Berg, 298 Minn. 181, 214 N.W.2d 232, 235, n.2 (1972); McCarr, 7 Minnesota Practice (Criminal Law and Procedure), § 377, at pp. 477-8.

Thus, witnesses who have waived immunity face a continuing decision as to whether to continue testifying and an attorney can be helpful in making these decisions.

Immunized witnesses, on the other hand, have no choice and no decisions to make. They must either follow their legal duty to testify and tell the truth or they break the law. Accordingly, there is no need for immunized witnesses to have an attorney present. There is no legal choice for them to make. Cf. Nyflot v. Commissioner of Public Safety, 369 N.W.2d 512, 517 (Minn. 1985).

Further, witnesses who are compelled to testify under a grant of use immunity, are by that very fact immune from prosecution based upon his or her testimony. Minn. Stat. § 609.09. As this Court stated in State v. Falcone, 292 Minn. 365, 371, 195 N.W.2d 572, 576, n.10 (1972), a witness who testifies without waiving his immunity from self-incrimination "is protected by his constitutional right and is immune from prosecution based upon his testimony. This immunity can be asserted to quash an indictment against the defendant."

Because a witness who has been granted use immunity has no legal choice regarding his testimony, and does not face the possibility of prosecution based on such testimony, there is no reason why he needs a lawyer sitting beside him during his testimony. The presence of such a lawyer would run against the strong policy of keeping unnecessary and unauthorized persons from the grand jury room. See, Dwire v. State, 381 N.W.2d 871 (Minn. Ct. App. 1986), review den. (Minn. April 11, 1986).

The practical effects of the proposal upon the process of grand juries looking into organized criminality would be very detrimental. Conspiracies of silence would be facilitated if attorneys working cooperatively were allowed to be present during the testimony of those lesser figures in a conspiracy who had been granted use immunity to gain their knowledge. Co-conspirators will have the ability to gain access to the testimony, and perhaps in some cases influence or limit the immunized witness' testimony.

A further detrimental impact on the grand jury's investigative process would come from attorneys' multiple representation of clients who are witnesses and potential targets in conspiracy cases. Such multiple representation is not unusual at a grand jury stage of proceedings, and would adversely effect the grand jury's right to obtain candid, unprepared testimony.

For all the above reasons, the Attorney General feels the proposed amendment of Rule 18.04 should not be adopted.

ADDITIONAL COMMENT ON PROPOSED AMENDMENT OF RULE
6.01.

The proposal to delete the requirement that a person sign the citation promising to appear is a substantive change for which the Advisory Committee again cites no authority. Presently, if a person refuses to sign, an officer is justified in concluding that there is a substantial likelihood the person will fail to respond to the citation. In addition, failure to appear following a signed promise to do so unquestionably justifies the issuance of a bench warrant. And in traffic offense cases a failure to appear after a signed promise to do so means the person can still have the offense certified on his or her driving record as a conviction pursuant to Minn. Stat. §§ 169.96, 171.02, subd. 13, and 171.16.

Deletion of the signing requirement adversely affects all these considerations.

CONCLUSION

Most of the proposed amendments are indeed "housekeeping" in nature, or are intended to bring the Rules into conformity with recent legislative enactments. The Attorney General supports these proposals. However, the substantive change envisioned in the proposal to amend Rule 18.04 is detrimental to the interests of justice. The Attorney General therefore opposes it.

Respectfully submitted,

HUBERT H. HUMPHREY, III
Attorney General
State of Minnesota



PAUL R. KEMPAINEN
Special Assistant
Attorney General
Atty. Lic. #54987

Second Floor, Ford Building
117 University Avenue
Saint Paul, Minnesota 55155
(612) 296-7573

Attorneys for State of Minnesota

MINNESOTA COUNTY ATTORNEYS ASSOCIATION

40 North Milton Street, Suite 100 • St. Paul, Minnesota 55104 • (612) 227-7493

OFFICE OF
APPELLATE COURTS
FILED

June 15, 1987

JUN 15 1987

WAYNE TSCHIMPERLE
CLERK

To: Ms. Cynthia Johnson
Court Commissioner
State Capitol Building

From: Ms. Jean Gerval
Executive Director
Minnesota County Attorneys Association

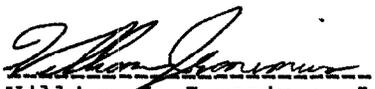
RE: June 25, 1987 PUBLIC HEARING TO CONSIDER ADOPTION OF AMENDMENTS TO THE
RULES OF CRIMINAL PROCEEDURE

CI-84-2137

REQUEST FOR ORAL ARGUMENT

The Minnesota County Attorneys Association would like to request that Mr. Steven Rathke, Crow Wing County Attorney, be allowed to present oral testimony on behalf of the MCAA in favor of amending Rule 26.03, subdivision 11, and also in favor of amending the Rules to include the joint trial provisions contained in CI-84-2137, AMENDED SUPPLEMENTARY NOTICE.

Sincerely,



William J. Jeronimus, Law Clerk



OFFICE OF THE HENNEPIN COUNTY ATTORNEY
2000 GOVERNMENT CENTER
MINNEAPOLIS, MINNESOTA 55487

June 11, 1987

**OFFICE OF
APPELLATE COURTS
FILED**

JUN 15 1987

Honorable Douglas K. Amdahl
Chief Justice
Minnesota Supreme Court
230 State Capitol Building
St. Paul, Minnesota 55155

**WAYNE TSCHIMPERLE
CLERK**

Re: Hearing before Minnesota Supreme Court
from the Supreme Court Advisory Committee
on Rules of Criminal Procedure

Dear Chief Justice Amdahl:

It is the understanding of personnel in the Hennepin County Attorney's Office that the Supreme Court Advisory Committee on Rules of Criminal Procedure will appear for a hearing before the Minnesota Supreme Court on June 25, 1987, at 11:00 a.m., in the Supreme Court courtroom.

As you know, Governor Perpich has now signed legislation relative to Minn. Stat. §631.035, and Minn. Stat. §631.07; the legislation pertaining to separate or joint trials for jointly charged defendants and order for final argument. I attach a photocopy of the pertinent Act, unfortunately, a copy without the signature of Governor Rudy Perpich.

On behalf of the Hennepin County Attorney, Thomas L. Johnson, who is presently out of town, I would request that Mr. Johnson be allowed to appear at that hearing to discuss the desirability of amending the applicable Rules of Criminal Procedure to correspond with the legislation that will be effective August 1, 1987. As can be noted readily, the legislation differs from Minnesota

Rules of Criminal Procedure 17.03, Subd. 2, relative to joinder of defendants. It also is obviously different from Minnesota Rules of Criminal Procedure 26.03, Subd. 11.

Thank you for your assistance in this request.

Sincerely,

THOMAS L. JOHNSON
Hennepin County Attorney

A handwritten signature in cursive script that reads "William B. Edwards". The signature is written in black ink and is positioned above the typed name and title.

WILLIAM B. EDWARDS
Principal Attorney
Chief, Criminal Division

WBE:jr

cc: Thomas L. Johnson
Robert Distad

AN ACT

H.F. No. 137

CHAPTER No.

395

1

2 relating to criminal procedure; providing a procedure
3 for ordering joint or separate trials for jointly
4 charged defendants; permitting the prosecution to
5 offer a rebuttal closing argument; amending Minnesota
6 Statutes 1986, section 631.07; proposing coding for
7 new law in Minnesota Statutes, chapter 631.

8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

10 Section 1. [631.035] [JOINTLY CHARGED DEFENDANTS; SEPARATE
11 OR JOINT TRIALS.]

12 When two or more defendants are jointly charged with a
13 felony, they may be tried separately or jointly in the
14 discretion of the court. In making its determination on whether
15 to order joinder or separate trials, the court shall consider
16 the nature of the offense charged, the impact on the victim, the
17 potential prejudice to the defendant, and the interests of
18 justice.

19 Sec. 2. Minnesota Statutes 1986, section 631.07, is
20 amended to read:

21 631.07 [ORDER OF FINAL ARGUMENT.]

22 When the giving of evidence is concluded in a criminal
23 trial, unless the case is submitted on either-or both sides
24 without argument, the ~~plaintiff shall begin and the defendant~~
25 ~~conclude the argument to the jury~~ prosecution may make a closing
26 argument to the jury. The defense may then make its closing

1 argument to the jury. On the motion of the prosecution, the
2 court may permit the prosecution to reply in rebuttal if the
3 court determines that the defense has made in its closing
4 argument a misstatement of law or fact or a statement that is
5 inflammatory or prejudicial. The rebuttal must be limited to a
6 direct response to the misstatement of law or fact or the
7 inflammatory or prejudicial statement.

8 Sec. 3. [EFFECTIVE DATE.]

9 Sections 1 and 2 are effective August 1, 1987, and apply to
10 prosecutions commenced on or after that date.